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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Berndt *et al.*

Appl. No.: 09/595,420

Filed: June 15, 2000

For: **Apparatus For the Operation of a  
Microfluidic Device**

Confirmation No.: 9071

Art Unit: 1755

Examiner: Jennine Brown

Atty. Docket: 100/08410 (2052.0120001)

### **Declaration in Support of the Request for Interference**

The undersigned, Colin B. Kennedy, hereby declares and states as follows:

1. I have been employed with Caliper Technologies Corp. (hereinafter "Caliper") since November of 1996. My current title is R&D Section Manager. My duties since beginning my employment with Caliper have included the design and development of equipment for use with microfluidic chips.
2. Prior to my employment with Caliper, I was employed as a consultant to Caliper. In May of 1996, I began providing consulting services for Caliper regarding a bioanalysis device for use with microfluidic chips (hereinafter, "Bioanalysis Device"). I continued to work on this project after I began employment with Caliper.
3. By May of 1998, a working prototype of the Bioanalysis Device based upon my design had been built. This prototype included many of the claimed features of the present application, U.S. Patent Application No. 09/595,420 (hereinafter,

“'420 Application”), such as a hinged holder for the microfluidic chip and an interchangeable interface element.

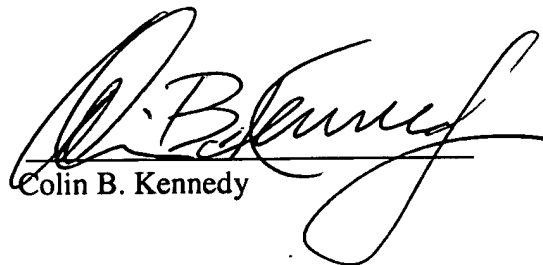
4. On or about May 2, 1998, Caliper entered into a development collaboration agreement (hereinafter, “Collaboration Agreement”) with Agilent Technologies, Inc. (hereinafter, “Agilent”). At this time, the prototype of the Bioanalysis Device and a binder of supporting documentation were delivered to Agilent for further development pursuant to the Collaboration Agreement.
5. Pursuant to the Collaboration Agreement, I worked with Manfred Berndt and Patrick Kaltenbach, both of Agilent, to refine the Bioanalysis Device for commercialization.
6. The ‘420 Application, which discloses and claims certain features of the Bioanalysis Device, was filed with the United States Patent and Trademark Office on June 15, 2000. The ‘420 Application names Manfred Berndt, Patrick Kaltenbach, and myself as inventors. The ‘420 Application is assigned to Caliper and Agilent.
7. In the course of my work designing the Bioanalysis Device, I contributed to at least the features recited in one or more of the independent claims 1, 14, 30, 32, 33, 34, and 35 (as well as a substantial number of the dependent claims) of the ‘420 Application.
8. Upon information and belief, a non-provisional patent application disclosing and claiming certain features of the Bioanalysis Device was filed with the United States Patent and Trademark Office on June 22, 2000, and was given U.S. Patent Application No. 09/598,968 (hereinafter, “'968 Application”). Upon information

and belief, the '968 Application names only Manfred Berndt as the sole inventor and is assigned to Agilent.

9. I contributed as an inventor to at least the features recited in one or more of the independent claims 1, 20, and 22-25 (as well as a substantial number of the dependent claims) of the '968 Application. Claims 1-14 and 18-25 have been copied into the '420 Application as claims 14-35.
10. The statements made in this declaration regarding my contributions to the conception of the invention are in no way meant to limit me to the listed features. If an interference were to be declared, this Declaration should not be construed as to prevent me from producing evidence to attest to my contributions to other features in the claims.
11. The undersigned further declares that all statements made herein of his knowledge are true and correct, that all statements made upon information and belief are believed to be true and correct, and further, that these statements were made with the knowledge that willful and false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful and false statements may jeopardize the validity of the present application or any patent issued thereon.

Date:

7.30.03

  
Colin B. Kennedy